



July 15, 2013

Karl Longley
Chair, Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Comments on Draft Western San Joaquin River Watershed Agricultural Order

Dear Mr. Longley,

We submit these comments in response to the Draft Western San Joaquin River Watershed Waste Discharge Order. As representatives of environmental and environmental justice communities located in the Central Valley and throughout California, our organizations have closely followed the development of the various General Waste Discharge Requirements for Irrigated Agricultural Discharges throughout the region and the state. We appreciate the efforts made by staff as well as the regulated community to create an effective regulatory program for agriculture. Our comments on the current draft reflect our concern that the draft, as currently written, fails to adequately address the widespread groundwater contamination attributable to irrigated agriculture, and the Regional Water Board's failure, through this order, to comply with applicable laws.

It is the responsibility of the Central Valley Regional Water Quality Control Board (Board) to protect both those communities currently affected by nitrate contamination and those that could be impacted in future, through the adoption of effective and enforceable regulations on agricultural discharges. Specifically:

- An enforceable program with appropriate triggers and limits can provide a source of funding for communities without safe drinking water.
- Early and effective implementation of best practices will help the entire basin. Limiting the increase in contamination is a clear Board mandate.
- No one knows how long full remediation will take, but some improvements in water quality can occur quickly. Remediation is a gradual process, but, just as shallow



domestic wells currently reflect the greatest amount of contamination,¹ they can also respond more quickly to improvements in management practices on the surface.

- The oft-stated assumption that nitrate buildup in the vadose zone will inflate nitrate contamination for decades to come must be informed by an effective monitoring program and a robust Management Practices Effectiveness Program. Further, “legacy” contamination problems are relevant to determining impact of current discharges. Nitrate concentrations already in high concentrations below the root zone and in unsaturated zone may still be considered discharges if continued irrigation practices move it to drinking water aquifers. Changing current irrigation and fertilization practices cannot affect what has occurred in the past, but it can affect the fate and continued movement and migration of already existing contaminants. Current and on-going groundwater pumping and recharge move contaminants to different aquifers and locations, and can dilute or exacerbate concentrations of contaminants in the groundwater, impacting domestic water supplies.
- The major problem preventing better definition of the pathways of contamination is lack of information on farm practices and site conditions, and this permit must require sufficient reporting to collect this information. This is also relatively low cost, compared to installing monitoring wells on each field. Yet this Draft Order does not collect basic data on the farm level, particularly for all areas outside of high vulnerability areas.

The Porter Cologne Water Quality Control Act² and the State’s Anti-degradation Policy³ require that the Regional Board issue waste discharge requirements that protect the region’s water quality for designated beneficial uses, as set out in the Basin Plans. However, this Draft Waste Discharge Requirements General Order For Growers within the West San Joaquin River Watershed (Draft Order) allows the *maximum* amount of groundwater degradation and even pollution to continue from the region’s approximately 530,000 acres of irrigated lands in contravention of the Basin Plan, State Anti-degradation Policy, and the Porter Cologne Water Quality Control Act.⁴ In doing so, the Draft Order violates California’s Anti-degradation policy, permits pollution and nuisance in violation of the Water Code, unlawfully delegates authority

² California Water Code §§ 13000 et seq.

³ Resolution 68-16.

⁴ See California Water Code §§ 13240, 13241, and 13263, requiring that waste discharge requirements implement the relevant water quality control plans, including the Basin Plans, which in turn include the Anti-degradation Policy, as well as water quality objectives.



exclusively held by the Board to the Executive Officer and disproportionately impacts low-income, communities of color, in violation of California's Civil Rights and Fair Housing Laws.

Most fundamentally, the Board must stop continued contamination and pollution. The Board should not allow dischargers under any circumstance to continue to pollute water quality beyond the drinking water standard, and instead, the Board should require dischargers to maintain the highest quality of water consistent with the maximum benefit to the people of the State. Unfortunately, this Draft Order allows the maximum amount of degradation and even continued pollution to continue to impact the water we rely on for drinking water supplies and other beneficial uses, without any ability to do enforcement actions or require mitigation for impacted communities.

Support for Small Grower Technical assistance

We strongly support provision of technical assistance for small and disadvantaged growers in development of farm evaluation and management plans, etc. We believe everyone would be better served if the Regional Board and third party coalitions provided targeted technical assistance to those farmers, rather than just more time, as is provided in the revisions to this order. As implementation continues, we would appreciate it if the Board required regular reporting on whether and how such assistance is being provided.

Obligations Under the Human Right to Water Act

While we appreciate finding 31 acknowledging the recently adopted state policy on the Human Right to Water, it does not sufficiently address the requirements of the statute. Beginning on January 1, 2013, AB 685 directs the Board to consider the human right to water "when revising, adopting, or establishing policies, regulations, and grant criteria." The duty to consider is an ongoing obligation of the Board, which is not possible to discharge through a single administrative action. To fulfill the legislative directive "to consider," the Board should undertake a range of activities based on legal precedent regarding similar statutes⁵. First, when considering a range of

⁵ See generally *City of Burbank v. State Water Res. Control Bd.*, 35 Cal. 4th 613, 625 (2005) (explaining that taking into consideration means "to take into account various factors," including those specified in legislation). See also *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *City of Arcadia v. State Water Res. Control Bd.*, 191 Cal. App. 4th 156, 177 (2010); *City of Davis v. Coleman*, 521 F.2d 661, 679, 682 (1975); *San Joaquin River Exch. Contractors Water Auth. v. State Water Res. Control Bd.*, 183 Cal. App. 4th 1110, 1120 (2010).



policies or regulations, the Board should give preference and adopt policies that advance the human right to water. Second, the Board should refrain from adopting policies or regulations that run contrary to securing equal access to safe drinking water. Finally, the Board should note in its record of decision the consequences that its actions have on access to safe drinking water in California.

The intent of the legislation is to ensure that all Californians have access to affordable, accessible, acceptable and safe water and sanitation in sufficient amounts to protect their health and dignity. In accordance with domestic law and human rights principles, access for human consumption should be prioritized over other water uses—including water for agriculture and industry—and should be non-discriminatory. Special attention must be given to those who do not have access to safe water.

A human rights approach to water challenges also requires that individuals and communities have meaningful opportunity to participate in decision-making affecting their access to safe and affordable water. Communities most in need of clean drinking water should be a focus of the process as well as the outcome of short-term and long-term planning regarding state water resources. Interested persons should have the opportunity to participate in administrative decisions through submission of written input or oral testimony. The Board should adopt an inclusive and transparent approach to decision-making by fostering participation by communities that historically have been impacted by source water contamination. The Board should also publically disclose efforts to consider the human right to water policy as well as the impact of these efforts on its final action.

Concerns and recommendations for the order

We continue to have the following major concerns with the Draft Order, as detailed below;

1. The Draft Order violates the State's Anti-degradation Policy, as outlined in detail below, including but not limited to
 - a. Failing to establish a baseline or require information that would inform a baseline determination for anti-degradation analysis purposes, and
 - b. Failing to require sufficient monitoring and reporting to ensure that any prohibition or protection requirement in the Draft Order is enforceable.
2. The Order allows unlawful pollution and nuisance to groundwater
3. Violation of Civil Rights and Anti-Discrimination Laws



4. The long timeline for implementation ensures that more communities will be impacted by groundwater contamination
5. Lack of transparency limits the public's right to know and the Board's ability to act to protect groundwater.

1. The Draft Order would violate the State Anti-degradation Policy

A. The Draft Order fails to require sufficient monitoring and reporting

The Draft Order fails to require sufficient monitoring and reporting to ensure that any prohibition or protection requirement in the Draft Order is enforceable. The Regional Board is relying on the Trend Monitoring to determine trends and degradation, and yet the monitoring requirements do not provide sufficient information to track trends or detect degradation for most contaminants.

1. Trend Monitoring Plans do not require monitoring of all Constituents of Concern.

The Draft Order does not require Trend Monitoring Plans to include all constituents of concern (COCs) related to agricultural discharges in the region – specifically, deleterious minerals, pesticide run-off or degradation products from pesticides. Only through inclusion of these products in trend monitoring wells, can the Draft Order determine actual degradation trends and ensure the General Order adequately protects groundwater from these contaminants.

Similarly, lack of trend monitoring for Contaminants of Concern, particularly pesticides and degradates, means that the Board does not have a mechanism to detect degradation or ensure compliance with limitations for those constituents. The Draft Order requires no continued monitoring for pesticides or degradates in groundwater.

The Draft Order gives the Executive Officer the authority to require additional monitoring or the development of management plans if it is determined that “irrigated agriculture may be causing or contributing to a trend of degradation of groundwater.” But it is unclear how that determination can be made if trend monitoring is only focused on the narrow band of contaminants of concern identified in Table 3 of the Monitoring and Reporting Program.

2. Regional monitoring and reporting is inadequate

Township level monitoring and reporting, as opposed to monitoring and reporting at smaller geographic units undermines meaningful efforts to protect groundwater. The township-level reporting requirement has no hydrologic justification. A 36-square mile region can straddle



groundwater basins, contain plumes of contamination and dozens of crops with differing nitrogen application rates. This gross level of reporting will make it difficult, if not impossible, to confirm compliance with the Waste Discharge Requirements.

3. Reporting of Nitrogen use efficiency is not required for all waters

Reporting of nitrogen use efficiency should be required for all waters, not just high vulnerability areas. We agree with current provisions in the Draft Order that all growers should be required to develop nitrogen management plans. Further, given that they are developing the plans, nutrient use efficiency data should be provided to the 3rd party Coalitions and be included in the annual summary report to the Board, as is required for high vulnerability areas. The costs of submitting and compiling those reports are relatively small, and it is essential to comply with the requirements of the law. In order to ensure that all high quality waters are adequately protected under the anti-degradation policy, there must be a mechanism to determine whether degradation is occurring and a way of determining whether BPTC is being implemented. *Asociacion de Gente Unida por el Agua* at 1274.

B. The Draft Order fails to set appropriate Receiving Water Limitations for compliance to meet the requirements of anti-degradation.

The Receiving Water Limitations in the Draft Order fail to comply with Anti-degradation Policy or the Basin Plans, and do not support the findings in the Draft Order. The Order, as currently drafted, only requires that “wastes discharged from Member operations shall not cause or contribute to an exceedance of applicable water quality objectives in the underlying groundwater, unreasonably affect applicable beneficial uses, or cause or contribute to a condition of pollution or nuisance,” and then, through the applicable footnote, allows at least up to 10 years of continued contribution to exceedances, pollution or nuisance. This means that the Draft Order is not only authorizing the maximum amount of degradation possible, but also authorizing continued pollution or nuisance or exceedances of water quality objectives and undermining any ability to take enforcement actions for those causing or contributing to that. This is entirely unacceptable.

The groundwater limitations should 1) include a limitation on degradation consistent with minimizing degradation to ensure the highest water quality consistent with the maximum benefit to the people of the State and BPTC, as well as 2) delete the footnote in order to omit altogether any authorization of continued contribution to pollution, nuisance or exceedances of water quality objectives. Without clear compliance standards in the groundwater limitations, the Board



undermines its own ability to conduct enforcement actions and therefore eliminates the basis for its own findings, and renders its protection measures illusory.

Similarly, the undue delay in the Management Practices Effectiveness Report undermines the enforceability of BPTC and violates the Board's duty to ensure rapid compliance through this order.

C. The Draft Order allows for degradation without conducting the analysis needed, or requiring sufficient data to be collected, to form a basis for making required anti-degradation findings.

State anti-degradation law requires that baseline water quality is to be maintained unless it has been demonstrated to the State that any change in water quality 1) will be consistent with the maximum benefit to the people of the state; 2) will not unreasonably affect present or probable future beneficial uses of such water; and 3) will not result in water quality less than prescribed in state policies.⁶ Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

Thus, analysis of whether the General Order violates the anti-degradation policy is a 3 step process: (1) Will baseline water quality be maintained; (2) If not, has the board demonstrated that the change in water quality (a) will be consistent with the maximum benefit to the people of the state; (b) will not unreasonably affect present or probable future beneficial uses of such water; and (c) will not result in water quality less than prescribed in state policies and (3) has the Board established that the activities subject to this order that will or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

⁶ See California Environmental Protection Agency, Regional Water Quality Control Board Central Valley Region. *A Compilation of Water Quality Goals* (August 2003), p. 6.



1. The Draft Order fails entirely to protect baseline water quality by failing to establish a baseline or set in place a mechanism for doing so.

Baseline water quality has been interpreted to mean “the best quality of the receiving water that has existed since 1968,... unless subsequent lowering was due to regulatory action consistent with State and federal anti-degradation policies.” APU 90-004. *See* Asociacion de Gente Unida Para el Agua, at 1270. Additionally, the California Environmental Protection Agency, and the Regional Water Quality Control Board Central Valley Region’s, *A Compilation of Water Quality Goals* (August 2003), defines background levels to be maintained as “the concentration of substances in natural waters that are unaffected by waste management practices or contamination incidents.” p. 6. Under either interpretation, the Draft Order would fail to protect baseline water quality. The Draft Order fails entirely to protect baseline water quality by failing to establish a baseline or set in place a mechanism for doing so.

The failure to establish a baseline means it is virtually impossible to enforce the anti-degradation policy. Furthermore, the failure to require any information to establish a baseline in any of the plans or reports or analysis developed to implement the Draft Order, make it impossible to determine levels of degradation occurring and permitted under this permit. When undertaking an anti-degradation analysis, the Regional Board must compare the baseline water quality to the water quality objectives. *Asociacion de Gente Unida por el Agua* at 1270. By failing to establish a baseline, the Draft Order, ipso facto, makes an anti-degradation analysis impossible and is thus violative of the anti-degradation policy.

We understand that it is difficult to determine historic baseline levels in every area under a general permit that covers such a large geographic area. However, the Regional Board must make best efforts to determine a baseline in order to provide a basis for any finding or determination of the level of degradation that is in the maximum benefit to the people of the State. At the very least, the Board should require the Groundwater Assessment Reports (GAR) to develop a basic analysis of baseline water quality utilizing available existing data to estimate historic baseline levels for at least the constituents of concern in the region. There is no such requirement in the Draft Order for the GAR or any other report, analysis or action included in the Draft Order. While establishment of an estimate of a baseline through the GAR would not inform the Board prior to approval of a final Waste Discharge Requirement General Order, it would at least provide the information needed to incorporate anti-degradation analysis into the implementation and enforcement of the permit going forward.



- D. The Draft Order fails to demonstrate that the change in water quality authorized by this permit will be consistent with the maximum benefit to the people of the state, and provides an inadequate basis for any determination that the benefits of the levels of degradation authorized are demonstrated to outweigh the costs of that degradation.

A determination as to whether degradation is consistent with maximum benefit to the people of the state is made on a case-by-case basis and is based on considerations of reasonableness under the circumstances. Factors to be considered include (1) past, present, and probable beneficial uses of the water (specified in Water Quality Control Plans); (2) economic and social costs, tangible and intangible, of the proposed discharge compared to the benefits, (3) environmental aspects of the proposed discharge; and (4) the implementation of feasible alternative treatment or control methods.⁷ The Board, in this Draft Order engaged in no such analysis, much less demonstrated that any change in water quality will be consistent with the maximum benefit to the people of the state. Furthermore, the Board neither demonstrated that the change in water quality would not unreasonably affect present or probable future beneficial uses of such water; nor result in water quality less than prescribed in state policies. To the extent that the Draft Order conclusively states such, monitoring and reporting requirements, as discussed above, fail to ensure that this will be the case.

This permit explicitly allows degradation by allowing degradation up to the water quality objective and provides no basis for allowing such contamination.

If the General Order allows degradation up to water quality objectives and only sets that as the enforceable compliance goal, then it will permit all degradation from baseline up to just below the level of unlawful exceedance. If the Board wants to permit this maximum level of degradation, it needs to determine that this is the highest water quality for the maximum benefit to the people of the state. There is no such finding, nor any analysis or basis for such a finding.

1. The Order fails to demonstrate that degradation will not unreasonably affect present or probable future beneficial uses of such water.

Setting the effective level of degradation at essentially the same point as the level of exceedance creates a standard that will ensure impacts to domestic water users. Public water systems charged with treating drinking water to meet drinking water standards do not treat the water to just below the standard, but set a target well below that level to ensure that fluctuations in treatment or in the quality of the source water do not result in an exceedance of water quality standards. Additionally, systems that rely on source water that is near an MCL must meet significantly

⁷ See [State Board] Order No. WQ 86-17, at 22,



increased monitoring burdens to ensure that levels do not exceed an MCL (for example, if a system relies on water that is over ½ the MCL for nitrate they are required to conduct much more frequent monitoring, which can mean significant costs to systems and consumers). This Order must set a goal for degradation far enough below that water quality objective to ensure that high quality waters do not exceed water quality objectives and beneficial uses are not impaired.

E. The Draft Order fails to establish that discharges to existing high quality waters will result in the legally adequate best practicable treatment or control (BPTC)

The Draft Order fails to establish that discharges to existing high quality waters will result in the best practicable treatment or control (BPTC) of the discharge necessary to assure that (a) pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

This Draft Order would allow for discharge of pollutants above baseline, or highest quality, levels into the region's groundwater,⁸ without imposing the best practicable treatment or control ("BPTC") requirements, which by definition require first determining that it will not result in degradation that will unreasonably affect present or probable beneficial uses and that it will result in maintaining the highest water quality consistent with maximum benefit to the people of the State.⁹ As by definition BPTC cannot result in pollution or nuisance, while the requirements of the order expressly allow for those results for up to 10 years through a groundwater management plan, the permit on its face fails to meet BPTC requirements. For the reasons outlined above, this Draft Order not only fails to make the necessary findings and determinations, but fails to require sufficient requirements to ensure those standards can be met. As such, this Draft Order does not require the BPTC or adequate performance standards or sufficient reporting and monitoring requirements to protect high quality groundwater.

In particular, in the information sheet of the Draft Order, the Regional Board states that the SQMPs/GQMPs are reviewed periodically to determine whether adequate progress is being made to address the degradation trend or impairment. However, there is not only no determination of baseline, but there is no determination of the level of degradation allowed. At a minimum, any GWQMP that is determined to have shown "inadequate progress" should be immediately deemed to no longer meet the requirements of the Groundwater Limitations, and

⁹ State Water Resources Control Board Resolution No. 68-16.



any member causing or contributing to unauthorized levels of degradation or exceedences of water quality objectives should be subject to enforcement actions. Fundamentally, the Draft Order fails to set the right goal and then fails to be able to measure whether it is meeting that goal. Therefore, by definition, this cannot be best practical treatment and control.

It is important to emphasize that where groundwater has already been polluted or degraded beyond the baseline, current dischargers should be required to do even more stringent management practices than they would have otherwise to ensure they are not contributing to exceedences of groundwater quality objectives, and therefore meet BPTC requirements. BPTC may therefore be different depending on conditions of receiving waters. Therefore, if a discharger is discharging into water at or above the water quality objective, it must, at a minimum, ensure it is not contributing to that exceedance in order to comply with BPTC. That may mean that dischargers in these areas must take extra measures to reduce loading impacts by current irrigation practices and comply with BPTC, including pump and fertilize, targeted recharge of high quality water to dilute discharge, in addition to instituting highly efficient nutrient management practices. More information on these practices is included in the UC Davis technical reports prepared and provided to the Board as part of SB2x1. It is important that requirements take into account that there are areas where very rapid improvements in water quality may be seen if adequate management practices are implemented.

2. The Order allows unlawful pollution and nuisance to groundwater

According to the Water Code, "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects ...: (A) The waters for beneficial uses. (Cal. Water Code 13050(1)(1)). For all the reasons that the Draft Order violates the state's anti-degradation policies, it too, if implemented would result in Pollution as defined by the Water Code, by:

- a) Allowing degradation up to the water quality objectives without the required findings permitting such degradation
- b) Allowing discharges to contribute to exceedances of water quality objectives and nuisance for up to 10 years
- c) Failing to establish a baseline to assess and analyze degradation or the impacts of discharge.
- d) Failing to establish adequate monitoring and reporting procedures to adequately monitor degradation or potential impacts to beneficial uses.



"Nuisance" means anything which is (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, (3) Occurs during, or as a result of, the treatment or disposal of wastes. (Cal. Water Code 13050(m)).

By allowing degradation of groundwater up to the water quality objective, by disregarding relevant public health goals in favor of often less protective water quality objectives, by failing to monitor for all constituents of concern, and allowing continued discharger contribution to exceedences of water quality objectives and nuisance for up to the next ten years, this Draft Order would allow for discharge of waste that is both injurious to health and interferes with the enjoyment of property for those whose domestic water quality will be impacted.

Separate and apart from prohibitions in the State's anti-degradation policy, California law prohibits outright pollution and nuisance with respect to the state's groundwater. (Cal. Water Code Section 13050 *et seq.*) These prohibitions in state law are applicable to both high quality waters, subject also to the anti-degradation policy and other waters. Thus to the extent that this order permits discharges that constitute nuisance or pollution, as discussed above, this Draft Order violates California law with respect to its treatment of and failure to protect all groundwater in the West San Joaquin River Watershed.

2. Violation of Civil Rights and Anti-Discrimination Laws

This Draft Order, if implemented, would disproportionately impact low income communities and communities of color by failing to protect groundwater from continued degradation. The Draft Order would allow further groundwater degradation, particularly nitrate contamination, which is the number one cause of drinking water well closure in the State. Already Latino and low-income communities are more likely to have contaminated drinking water in the Central Valley region, and this is most often due to high levels of nitrate in the groundwater.¹⁰ Specifically in the San Joaquin Valley, small communities with high concentrations of Latinos are disproportionately impacted by nitrate contamination from agricultural waste, meaning Latino communities are more likely to have higher levels of nitrates in their drinking water¹¹.

¹⁰ Environmental Justice Coalition for Water, *Thirsty for Justice: A People's Blueprint for California Water* (2005)

¹¹ Carolina Balasz, et.al., *Social Disparities in Nitrate Contaminated Drinking Water in California's San Joaquin Valley*, Environmental Health Perspectives June 2011.



Additionally, Latino and low-income communities are less likely to have health care and access to treatment or substitute water sources, and are more likely to be exposed to cumulative deleterious environmental impacts through other media (such as air).

It is also important for the Board to understand that continued degradation and exceedences of groundwater objectives will cause less water availability for domestic and municipal use, resulting in fewer will-serve letters and therefore the inability to develop housing in the region.

By disparately impacting low income, communities of color, the Board's failure to enact adequate groundwater protections, violates our states commitment to equality and freedom from discrimination as laid out in California Government Code, Section 11135 which states that no person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency. Furthermore, the Board's failure to enact groundwater protections threatens California's Fair Employment and Housing Act, California Government Code 12900, et seq., which guarantee all Californians the right to hold and enjoy housing without discrimination based on race, color or national origin.

The California Government Code Section 65008 renders null and void any action undertaken by a local governmental agency that denies to any individual or group of individual the enjoyment of their residence, landownership or tenancy. The Board's decision, if it fails to protect the drinking water for California's most vulnerable communities through adoption of this Draft Order may be null and void.

Therefore, this Draft Order would disproportionately impact low-income communities and communities of color, in violation of California Government Code Section 11135, Fair Employment and Housing Act and other state and federal civil rights laws.

4. The long timeline for implementation ensures that more communities will be impacted by groundwater contamination

The continued delay in implementing basic groundwater protections has harmed hundreds of thousands of Central Valley residents. This order does little to remedy that inequity, with delays



of at least a decade before growers must demonstrate that their actions are improving water quality.

Under the timeline provided for this draft order, the earliest results from trend monitoring won't be seen before 2017. Even worse, BPTC will only be confirmed (and then only for the highest priority crops and soils) in 2023, the same year that full compliance is required. It is clear that, if the order is adopted as currently written, enforcement based on actual impacts to water quality will not be possible for at least a decade, and communities will continue to suffer and pay for water quality degradation for the foreseeable future.

This order should have timelines that will provide for compliance by the date in the order, which means that the deadlines for trend monitoring and BPTC confirmation should be moved up. In the interim, the order can base enforcement upon reported nutrient ratios. The Water Board should set a level for appropriate deviation from median for crop-based nitrogen budgets, and issue violation notices and fines to those growers who report nutrient budgets outside of that deviation. This fine could be set at a minimal level initially, and increase with each nutrient report, with the fines generated going to a SEP established to provide safe drinking water to communities with nitrate contamination.

5. Lack of transparency limits the public's right to know about impacts to their water quality and the Board's ability to act to protect it.

Another barrier to enforcement is the limited amount of information to be made public by the 3rd party coalitions in their reports to the Board. While nitrogen budgets are extremely useful, they fail to provide needed information about nitrogen loading. The order should require reporting of fertilizer application which will, when combined with the nitrogen budget ratio, provide important information about nitrogen loading to groundwater. This information will be critical both to understanding groundwater monitoring data and in prioritizing growers for inspection and enforcement. Fertilizer use, much like pesticide use, is not a confidential trade secret and is an indicator that should be provided as part of the nutrient budgets to determine nitrogen loading of groundwater. This was one of the State Water Board's recommendations regarding the Nitrate Report.

Finally, as we have stated previously, this order contains little data to inform the Board's decision, and as implementation proceeds over the next decade, the Board has no continuing decision-making role. The Executive Officer, on the other hand, can make large-scale changes



to the order – amending vulnerability areas, reducing reporting requirements, and determining where and how monitoring of constituents of concern will occur. The Board has a responsibility to ensure that this order is effectively and adequately implemented and enforced and should identify a trigger for ensuring that this responsibility is carried out.

Conclusion

We appreciate the opportunity to review this order and provide input. As you can see, we continue to have significant concerns about this order. We trust that the final order will remedy these faults so that we can fully support this order.

Sincerely,

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